
SENATE BILL 5128

State of Washington

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2013 Regular Session

By Senators Holmquist Newbry, Braun, King, Baumgartner, Sheldon, Rivers, Ericksen, Benton, Litzow, Becker, Dammeier, Smith, Hill, Bailey, Honeyford, Tom, Schoesler, Parlette, Padden, and Hewitt

Read first time 01/18/13. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to compensation for injured workers; amending RCW
2 51.32.090; adding new sections to chapter 51.04 RCW; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 51.04 RCW
6 to read as follows:

7 (1)(a) Notwithstanding RCW 51.04.060 or any other provision of this
8 title, beginning September 1, 2013, the parties to an allowed claim for
9 benefits may enter into a voluntary settlement agreement as provided in
10 this section with respect to one or more allowed claims for benefits
11 under this title. All voluntary settlement agreements must be approved
12 by the board of industrial insurance appeals. The voluntary settlement
13 agreement may:

14 (i) Bind the parties with regard to any or all aspects of an
15 allowed claim including, but not limited to, monetary payment,
16 vocational services, and claim closure;

17 (ii) Not subject any employer who is not a signatory to the
18 agreement to any responsibility or burden under any claim; and

1 (iii) Not be submitted to the board under subsection (2) or (3) of
2 this section within twelve weeks of the date of injury or disease
3 manifestation.

4 (b) For purposes of this section, "parties" means:

5 (i) For a self-insured claim, the worker and the employer; and

6 (ii) For a state fund claim, the worker, the employer, and the
7 department.

8 (c) For state fund claims, the department shall negotiate the
9 settlement with the worker. Any voluntary settlement agreement entered
10 into under this section must be signed by the parties or their
11 representatives and must clearly state that the parties understand and
12 agree to the terms of the voluntary settlement agreement. Unless one
13 of the parties revokes consent to the agreement, as provided in
14 subsection (3) of this section, the voluntary settlement agreement
15 becomes final and binding thirty days after approval of the agreement
16 by the board of industrial insurance appeals.

17 (d) A voluntary settlement agreement that has become final and
18 binding as provided in this section is binding on the department and on
19 all parties to the agreement as to its terms and the injuries and
20 occupational diseases to which the voluntary settlement applies. A
21 voluntary settlement agreement that has become final and binding is not
22 subject to appeal.

23 (2)(a) If a worker is not represented by an attorney at the time of
24 signing a voluntary settlement agreement, the parties must forward a
25 copy of the signed settlement agreement to the board with a request for
26 a conference with a settlement officer. Unless one of the parties
27 requests a later date, the settlement officer must convene a conference
28 within fourteen days after receipt of the request for the limited
29 purpose of receiving the voluntary settlement agreement of the parties,
30 explaining to the worker the benefits generally available under this
31 title, and explaining that a voluntary settlement agreement may alter
32 the benefits payable on a claim. In no event may a settlement officer
33 render legal advice to any party.

34 (b) Before approving the settlement agreement, the settlement
35 officer shall ensure that the worker has an adequate understanding of
36 the settlement proposal and its consequences to the worker.

37 (c)(i) The settlement officer may approve a settlement agreement
38 only if the officer finds that the settlement is in the best interest

1 of the worker. When determining whether the settlement is in the best
2 interest of the worker, the settlement officer shall consider the
3 following factors, taken as a whole, with no individual factor being
4 determinative:

5 (A) The nature and extent of the injuries and disabilities of the
6 worker;

7 (B) The age and life expectancy of the injured worker;

8 (C) Whether the injured worker has any health, disability, or
9 related insurance;

10 (D) Any other benefits the injured worker is receiving or is
11 entitled to receive and the effect a settlement agreement might have on
12 those benefits;

13 (E) The marital status of the injured worker; and

14 (F) The number of dependents of the injured worker.

15 (ii) Within seven days after the conference, the settlement officer
16 shall issue an order allowing or rejecting the voluntary settlement
17 agreement. There is no appeal from the settlement officer's decision.

18 (d) If the settlement officer issues an order allowing the
19 voluntary settlement agreement, the order must be submitted to the
20 board.

21 (3) If a worker is represented by an attorney at the time of
22 signing a voluntary settlement agreement, the parties may submit the
23 agreement directly to the board without the conference described in
24 this section.

25 (4) Upon receiving the voluntary settlement agreement, the board
26 shall approve the agreement within thirty working days of receipt
27 unless it finds that the parties have not entered into the agreement
28 knowingly and willingly. If the board approves the agreement, it shall
29 provide notice to the department of the binding terms of the agreement
30 and provide for placement of the agreement in the applicable claim
31 files.

32 (5) A party may revoke consent to the voluntary settlement
33 agreement by providing written notice to the other parties and the
34 board within thirty days after the date the agreement is approved by
35 the board.

36 (6) To the extent the worker is found to be entitled to temporary
37 total disability or permanent total disability benefits while a

1 voluntary settlement agreement is being negotiated, or during the
2 revocation period of an agreement, the benefits must be paid until the
3 agreement becomes final.

4 (7) When future liability for medical benefits is released or
5 otherwise relinquished in a settlement agreement under this section,
6 any monetary compensation for medical benefits must be dispensed
7 pursuant to a schedule of payments as established in the settlement
8 agreement. The schedule of payments must be reasonably calculated to
9 provide the injured worker with periodic payments throughout the
10 expected time during which the worker will need medical treatment.

11 (8) A claim closed pursuant to a voluntary settlement agreement can
12 be reopened only upon a showing of worsening of the related medical
13 conditions under RCW 51.32.160 for medical treatment only. Further
14 temporary total, temporary partial, permanent partial, or permanent
15 total benefits are not payable under the same claim for which a
16 voluntary settlement has been approved by the board.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 51.04 RCW
18 to read as follows:

19 (1) In calendar years 2016, 2021, and 2026, the department shall
20 contract for an independent study of voluntary settlement agreements
21 approved by the board under this section. The study must be performed
22 by a researcher that has experience in workers' compensation systems.
23 When selecting the independent researcher, the department shall consult
24 with the workers' compensation advisory committee. The study must
25 evaluate the quality and effectiveness of settlement agreements of
26 state fund and self-insured claims, provide information on the impact
27 of settlement agreements to the state fund and to self-insured
28 employers, and evaluate the outcomes of workers who have settled their
29 claims. The study must be submitted to the appropriate committees of
30 the legislature.

31 (2) The department shall contract with an independent entity with
32 research experience in workers' compensation systems nationwide to
33 study the nature, incidence, and cost of occupational disease claims in
34 the Washington workers' compensation system. When selecting the
35 independent researcher the department shall consult with the workers'
36 compensation advisory committee. The study shall include, but not be
37 limited to, an examination of the frequency and severity of

1 occupational disease claims for state fund and self-insured employers,
2 both currently and with respect to historical trends; the impact of
3 occupational disease claims on long-term disability and pension trends;
4 consideration of the statutory definition of occupational disease, and
5 interpretation of it by courts, the board, and the department, how it
6 compares to definitions in other states' systems and whether as applied
7 it clearly delineates conditions caused by occupational exposures and
8 those caused by nonoccupational exposures; consideration of the statute
9 of limitation for filing occupational disease claims, and its
10 interpretation by courts, and whether as applied it functions as an
11 appropriate limitation on the filing of state claims; issues related to
12 the apportionment of occupational diseases between workers and
13 employers; and a comparison of other states and their definitions of
14 occupational disease. The study must be submitted to the appropriate
15 committees of the legislature by September 1, 2013.

16 (3) The department shall contract for an independent study of the
17 return to work provisions under RCW 51.32.090. The study must be
18 performed by a researcher that has experience in workers' compensation
19 systems. When selecting the independent researcher, the department
20 shall consult with the workers' compensation advisory committee. The
21 study must evaluate the quality and effectiveness of the return to work
22 program and whether the program is being utilized by employers, and
23 evaluate the outcomes of workers participating in the program. The
24 study must be submitted to the appropriate committees of the
25 legislature by December 2016.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.04 RCW
27 to read as follows:

28 The department must maintain copies of all voluntary settlement
29 agreements entered into between the parties and develop processes under
30 RCW 51.28.070 to furnish copies of such agreements to any party
31 contemplating any subsequent voluntary settlement agreement with the
32 worker on any claim. The department shall also furnish claims
33 histories that include all prior permanent disability awards received
34 by the worker on any claims by body part and category or percentage
35 rating, as applicable. Copies of such agreements and claims histories
36 shall be furnished within ten working days of a written request. An

1 employer may not consider a prior settlement agreement or claims
2 history when making a decision about hiring or the terms or conditions
3 of employment.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 51.04 RCW
5 to read as follows:

6 If a worker has received a prior award of, or entered into a
7 voluntary settlement for, total or partial permanent disability
8 benefits, it shall be conclusively presumed that the medical condition
9 causing the prior permanent disability exists and is disabling at the
10 time of any subsequent industrial injury or occupational disease.
11 Except in the case of total permanent disability, the accumulation of
12 all permanent disability awards issued with respect to any one part of
13 the body in favor of the worker may not exceed one hundred percent over
14 the worker's lifetime. When entering into a voluntary settlement
15 agreement under this chapter, the department or self-insured employer
16 may exclude amounts paid to settle claims for prior portions of a
17 worker's permanent total or partial disability.

18 **Sec. 5.** RCW 51.32.090 and 2011 1st sp.s. c 37 s 101 are each
19 amended to read as follows:

20 (1) When the total disability is only temporary, the schedule of
21 payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as
22 the total disability continues.

23 (2) Any compensation payable under this section for children not in
24 the custody of the injured worker as of the date of injury shall be
25 payable only to such person as actually is providing the support for
26 such child or children pursuant to the order of a court of record
27 providing for support of such child or children.

28 (3)(a) As soon as recovery is so complete that the present earning
29 power of the worker, at any kind of work, is restored to that existing
30 at the time of the occurrence of the injury, the payments shall cease.
31 If and so long as the present earning power is only partially restored,
32 the payments shall:

33 (i) For claims for injuries that occurred before May 7, 1993,
34 continue in the proportion which the new earning power shall bear to
35 the old; or

1 (ii) For claims for injuries occurring on or after May 7, 1993,
2 equal eighty percent of the actual difference between the worker's
3 present wages and earning power at the time of injury, but: (A) The
4 total of these payments and the worker's present wages may not exceed
5 one hundred fifty percent of the average monthly wage in the state as
6 computed under RCW 51.08.018; (B) the payments may not exceed one
7 hundred percent of the entitlement as computed under subsection (1) of
8 this section; and (C) the payments may not be less than the worker
9 would have received if (a)(i) of this subsection had been applicable to
10 the worker's claim.

11 (b) No compensation shall be payable under this subsection (3)
12 unless the loss of earning power shall exceed five percent.

13 (c) The prior closure of the claim or the receipt of permanent
14 partial disability benefits shall not affect the rate at which loss of
15 earning power benefits are calculated upon reopening the claim.

16 (4)(a) The legislature finds that long-term disability and the cost
17 of injuries is significantly reduced when injured workers remain at
18 work following their injury. To encourage employers at the time of
19 injury to provide light duty or transitional work for their workers,
20 wage subsidies and other incentives are made available to employers
21 insured with the department.

22 (b) (~~Whenever~~) The employer of injury (~~requests that~~) may
23 provide light duty or transitional work to a worker who is entitled to
24 temporary total disability under this chapter (~~be certified by a~~
25 physician or licensed advanced registered nurse practitioner as able to
26 perform available work other than his or her usual work,). The
27 employer or the department shall obtain from the physician or licensed
28 advanced registered nurse practitioner a statement confirming the light
29 duty or transitional work is consistent with the worker's medical
30 restrictions related to the injury. This statement should be obtained
31 before the start of the light duty or transitional work unless the
32 worker has already returned to work with the employer of injury in
33 which case the statement may be obtained following the start date of
34 the job. The employer shall furnish to the physician or licensed
35 advanced registered nurse practitioner, with a copy to the worker, a
36 statement describing the work (~~available~~) with the employer of injury
37 in terms that will enable the physician or licensed advanced registered
38 nurse practitioner to relate the physical activities of the job to the

1 worker's disability. The physician or licensed advanced registered
2 nurse practitioner shall (~~then determine~~) confirm whether the worker
3 is physically able to perform the work described. The worker's
4 temporary total disability payments shall (~~continue until the worker~~
5 ~~is released by his or her physician or licensed advanced registered~~
6 ~~nurse practitioner for the work, and begins the work with the employer~~
7 ~~of injury. If~~) stop effective the date the light duty or transitional
8 job starts. Temporary total disability payments shall resume if the
9 work thereafter comes to an end before the worker's recovery is
10 sufficient in the judgment of his or her physician or licensed advanced
11 registered nurse practitioner to permit him or her to return to his or
12 her usual job, or to perform other available work offered by the
13 employer of injury(~~, the worker's temporary total disability payments~~
14 ~~shall be resumed~~). Should the available work described, once
15 undertaken by the worker, impede his or her recovery to the extent that
16 in the judgment of his or her physician or licensed advanced registered
17 nurse practitioner he or she should not continue to work, the worker's
18 temporary total disability payments shall be resumed when the worker
19 ceases such work at the direction of the physician or licensed advanced
20 registered nurse practitioner.

21 (c) To further encourage employers to maintain the employment of
22 their injured workers, an employer insured with the department and that
23 offers work to a worker pursuant to this subsection (4) shall be
24 eligible for reimbursement of the injured worker's wages for light duty
25 or transitional work equal to fifty percent of the basic, gross wages
26 paid for that work, for a maximum of sixty-six work days within a
27 consecutive twenty-four month period. In no event may the wage
28 subsidies paid to an employer on a claim exceed ten thousand dollars.
29 Wage subsidies shall be calculated using the worker's basic hourly
30 wages or basic salary, and no subsidy shall be paid for any other form
31 of compensation or payment to the worker such as tips, commissions,
32 bonuses, board, housing, fuel, health care, dental care, vision care,
33 per diem, reimbursements for work-related expenses, or any other
34 payments. An employer may not, under any circumstances, receive a wage
35 subsidy for a day in which the worker did not actually perform any
36 work, regardless of whether or not the employer paid the worker wages
37 for that day.

1 (d) If an employer insured with the department offers a worker work
2 pursuant to this subsection (4) and the worker must be provided with
3 training or instruction to be qualified to perform the offered work,
4 the employer shall be eligible for a reimbursement from the department
5 for any tuition, books, fees, and materials required for that training
6 or instruction, up to a maximum of one thousand dollars. Reimbursing
7 an employer for the costs of such training or instruction does not
8 constitute a determination by the department that the worker is
9 eligible for vocational services authorized by RCW 51.32.095 and
10 51.32.099.

11 (e) If an employer insured with the department offers a worker work
12 pursuant to this subsection (4), and the employer provides the worker
13 with clothing that is necessary to allow the worker to perform the
14 offered work, the employer shall be eligible for reimbursement for such
15 clothing from the department, up to a maximum of four hundred dollars.
16 However, an employer shall not receive reimbursement for any clothing
17 it provided to the worker that it normally provides to its workers.
18 The clothing purchased for the worker shall become the worker's
19 property once the work comes to an end.

20 (f) If an employer insured with the department offers a worker work
21 pursuant to this subsection (4) and the worker must be provided with
22 tools or equipment to perform the offered work, the employer shall be
23 eligible for a reimbursement from the department for such tools and
24 equipment and related costs as determined by department rule, up to a
25 maximum of two thousand five hundred dollars. An employer shall not be
26 reimbursed for any tools or equipment purchased prior to offering the
27 work to the worker pursuant to this subsection (4). An employer shall
28 not be reimbursed for any tools or equipment that it normally provides
29 to its workers. The tools and equipment shall be the property of the
30 employer.

31 (g) An employer may offer work to a worker pursuant to this
32 subsection (4) more than once, but in no event may the employer receive
33 wage subsidies for more than sixty-six days of work in a consecutive
34 twenty-four month period under one claim. An employer may continue to
35 offer work pursuant to this subsection (4) after the worker has
36 performed sixty-six days of work, but the employer shall not be
37 eligible to receive wage subsidies for such work.

1 (h) An employer shall not receive any wage subsidies or
2 reimbursement of any expenses pursuant to this subsection (4) unless
3 the employer has completed and submitted the reimbursement request on
4 forms developed by the department, along with all related information
5 required by department rules. No wage subsidy or reimbursement shall
6 be paid to an employer who fails to submit a form for such payment
7 within one year of the date the work was performed. In no event shall
8 an employer receive wage subsidy payments or reimbursements of any
9 expenses pursuant to this subsection (4) unless the worker's physician
10 or licensed advanced registered nurse practitioner has restricted him
11 or her from performing his or her usual work and the worker's physician
12 or licensed advanced registered nurse practitioner has released him or
13 her to perform the work offered.

14 (i) Payments made under (b) through (g) of this subsection are
15 subject to penalties under RCW 51.32.240(5) in cases where the funds
16 were obtained through willful misrepresentation.

17 (j) Once the worker returns to work under the terms of this
18 subsection (4), he or she shall not be assigned by the employer to work
19 other than the available work described without the worker's written
20 consent, or without prior review and approval by the worker's physician
21 or licensed advanced registered nurse practitioner. An employer who
22 directs a claimant to perform work other than that approved by the
23 attending physician and without the approval of the worker's physician
24 or licensed advanced registered nurse practitioner shall not receive
25 any wage subsidy or other reimbursements for such work.

26 (k) If the worker returns to work under this subsection (4), any
27 employee health and welfare benefits that the worker was receiving at
28 the time of injury shall continue or be resumed at the level provided
29 at the time of injury. Such benefits shall not be continued or resumed
30 if to do so is inconsistent with the terms of the benefit program, or
31 with the terms of the collective bargaining agreement currently in
32 force.

33 (l) In the event of any dispute as to the validity of the work
34 offered or as to the worker's ability to perform the available work
35 offered by the employer, the department shall make the final
36 determination pursuant to an order that contains the notice required by
37 RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

1 (5) An employer's experience rating shall not be affected by the
2 employer's request for or receipt of wage subsidies.

3 (6) The department shall create a Washington stay-at-work account
4 which shall be funded by assessments of employers insured through the
5 state fund for the costs of the payments authorized by subsection (4)
6 of this section and for the cost of creating a reserve for anticipated
7 liabilities. Employers may collect up to one-half the fund assessment
8 from workers.

9 (7) No worker shall receive compensation for or during the day on
10 which injury was received or the three days following the same, unless
11 his or her disability shall continue for a period of fourteen
12 consecutive calendar days from date of injury: PROVIDED, That attempts
13 to return to work in the first fourteen days following the injury shall
14 not serve to break the continuity of the period of disability if the
15 disability continues fourteen days after the injury occurs.

16 (8) Should a worker suffer a temporary total disability and should
17 his or her employer at the time of the injury continue to pay him or
18 her the wages which he or she was earning at the time of such injury,
19 such injured worker shall not receive any payment provided in
20 subsection (1) of this section during the period his or her employer
21 shall so pay such wages: PROVIDED, That holiday pay, vacation pay,
22 sick leave, or other similar benefits shall not be deemed to be
23 payments by the employer for the purposes of this subsection.

24 (9) In no event shall the monthly payments provided in this
25 section:

26 (a) Exceed the applicable percentage of the average monthly wage in
27 the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

33 (b) For dates of injury or disease manifestation after July 1,
34 2008, be less than fifteen percent of the average monthly wage in the

1 state as computed under RCW 51.08.018 plus an additional ten dollars
2 per month if the worker is married and an additional ten dollars per
3 month for each child of the worker up to a maximum of five children.
4 However, if the monthly payment computed under this subsection (9)(b)
5 is greater than one hundred percent of the wages of the worker as
6 determined under RCW 51.08.178, the monthly payment due to the worker
7 shall be equal to the greater of the monthly wages of the worker or the
8 minimum benefit set forth in this section on June 30, 2008.

9 (10) If the supervisor of industrial insurance determines that the
10 worker is voluntarily retired and is no longer attached to the
11 workforce, benefits shall not be paid under this section.

12 (11) The department shall adopt rules as necessary to implement
13 this section.

14 NEW SECTION. **Sec. 6.** The department of labor and industries may
15 adopt rules to implement this act.

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